APHC010053952024

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)

[3463]

TUESDAY ,THE TWENTY SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE G.NARENDAR

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

WRIT APPEAL Nos:107, 108, 109, 110, 111 and 112 OF 2024

W.A.No.107 of 2024
Between:

STATE OF ANDHRA PRADESH AND OTHERS **...APPELLANT(S)**

AND

Kodepati Karuna **...RESPONDENT(S)**

Counsel for the Appellant(s):SRI.Ponnavolu Sudhakar Reddy, ADDL ADVOCATE GENERAL (AP)

Counsel for the Respondents: Sri B.Adinarayana Rao, Learned Senior Counsel, Sri Sai Sanjay Suraneni, and Sri Karumanchi Indraneel Babu

The Court made the following:

COMMON JUDGMENT:- *(per Hon'ble Sri Justice G.Narendar)*

1) Heard Sri. Ponnarolu Sudhakar Reddy, learned Additional Advocate General, on behalf of the Appellants in all the appeals & Sri.B. Adinarayana Rao, learned Senior Advocate, assisted by Sri. Sai Sanjay Suraneni, in the lead appeal & Sri.Karumanchi Indraneel Babu, learned Advocate, appearing for the Respondents in the connected appeals.

2) The Appellants are the State, represented by the Department of Municipal Administration and Urban Development, the A.P. Capital Region Development Authority, the Special Deputy Collector and Competent Authority, and the Commissioner, who is the author of the impugned notice.

3) The Appellants are before this Court being agitated by the Interim Order, dated 25.01.2024, passed by the learned Single Judge, which reads thus:

> *"In view of the same, re allotment plots proposed shall go on in respect of others. The authority shall adhere to the procedure as per Rule 11(3) of the Rules. The authority shall not cancel the plots, already allotted to the*

petitioners in the above writ petitions till a decision is rendered by this Court."

4) It is the case of the Appellants that the Petitioners, who are land losers, who have been allotted re-constituted plots outside the land pooling scheme area, contrary to the terms of the Scheme and the Act. That the land losers are entitled for allotment of re-constituted plots, only within the area covered by the land-pooled under the scheme and are not entitled for any allotment outside the same much less in the LA area or out of the lands acquired separately under the Land Acquisition act.

5) The learned Additional Advocate General has placed reliance on several provisions of law as well as several covenants of the agreement executed between the land losers and the State.

6) Per *contra*, the learned Senior Advocate appearing on behalf of the Respondents, that is, some of the Petitioners, asserts that the power of cancellation or revocation of agreement is not absolute and that the power is contingent on the existence of certain pre-conditions.

7) We have gone through the material papers and the pleadings. Admittedly, the fact is that the Petitioners are land losers, which lands form part of the Capital City Area. The land losers under the Scheme of the Act are entitled for compensation in terms of the Scheme of the Act. This is the undisputed position.

8) The crux of the disputed in the instant batch of writ petitions is;

> "Whether the allotments of re-constituted plots can also be outside the 'scheme area' or only within the 'scheme area'; or
>
> "Whether the land losers are entitled to allotment of re-constituted plots, from out of the lands, which are the subject matter of acquisition under the Land Acquisition Act";
>
> 'Whether the allotments can be unilaterally revoked / cancelled";

The determination of the above issues requires factual aspects to be appreciated. That apart, the rights of the parties, vis-a-vis the terms of the contract executed amongst themselves has also to be gone into if the Writ Petitions are to be considered and disposed of on merits, which in our opinion is impermissible in proceedings under instituted invoking the provisions of Article 226 of the Constitution of India. That apart the determination of the issues noted supra would also call upon the Writ Court to indulge in an interpretational exercise of the covenants of the contract executed between the parties. The fact remains that both parties have willingly executed the contract. The cancellation being that of allotments made by the Authority, whether the point of competence of the Authority to act so, can be gone into at this stage, is a moot point?. We do not propose to go into the same and leave it open in view of order to follow.

9) A bare reading of the notice would indicate that the decision to cancel has been taken by the authority without affording an opportunity to the interested/aggrieved persons. It cannot be denied that the action of the authority would

certainly result in civil consequences. In that, an allotment assuming it is provisional, also creates a limited or transitory interest in respect of immovable property allotted to them, more so when the allotment is a quid-pro-quo for relinquishing a certain fundamental right, that is, right over immovable property. That being the case, the authority was required to put them on notice, invite objections, hear them and, thereafter, ought to have passed a considered & speaking order. The authority having failed in complying with these basic principle of law of a*udi alteram parte*m, we are of the opinion that the present dispute could be resolved by directing the parties to comply with the due process of law.

10) The law in this regard is no more *res integra*. The law with regard to applicability of the principles of natural justice and mandating the compliance with the principles of *audi alteram partem* has evolved decades ago. One of the earliest and authoritative pronouncements by the Hon'ble Apex Court is in the case of **State of Orissa v. Dr.(Miss) Binapani Dei**[1]. A useful reference can be made to the observations in

[1] AIR 1967 SC 1269

paragraphs 10 and 12 of the said ruling, which read as under:

> "**10.** The State has undoubtedly authority to compulsorily retire a public servant who is superannuated. But when that person disputes the claim he must be informed of the case of the State and the evidence in support thereof and he must have a fair opportunity of meeting that case before a decision adverse to him is taken.
>
> **12.** It is true that some preliminary enquiry was made by Dr S. Mitra. But the report, of that enquiry officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why April 16, 1907 should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps

> were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State."

11) The latest ruling in this line of jurisprudence is the ruling rendered in the case of **State Bank of India v. Rajesh Agarwal**[2]. The telling observations of the Bench in paragraphs 36, 40, 41, 42, 44, 45 and 46 not only lays bare the distinction and merit of the principle but also reflects the imprimatur of the Hon'ble Apex Court to the in-violability of the principle. The above elucidation and exposition of the law on the principle leaves no doubt in the mind of this Court as to how this round of litigation must end. The afore-stated paragraphs are extracted herein below for the sake of convenience.

> "**36.** We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian

[2] (2023) 6 SCC 1

jurisprudence : (*i*) *nemo judex in causa sua*, which means that no person should be a Judge in their own cause; and (*ii*) *audi alteram partem*, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favour interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power. [*Union of India* v. *J.N. Sinha*, (1970) 2 SCC 458]

40. The process of forming an informed opinion under the Master Directions on Frauds is administrative in nature. This has also been acceded to by RBI and lender banks in their written submissions. It is now a settled principle of law that the rule of *audi alteram partem* applies to administrative actions, apart from judicial and quasi-judicial functions. [*A.K. Kraipak* v. *Union of India*, (1969) 2 SCC 262; *St. Anthony's College* v. *Rev. Fr. Paul Petta*, 1988 Supp SCC 676 : 1989 SCC (L&S) 44; *Uma Nath Pandey* v. *State of U.P.*, (2009) 12 SCC 40 : (2010) 1 SCC (Cri) 501.] It is also a settled position in administrative law that it is mandatory to provide for an opportunity of being heard when an

administrative action results in civil consequences to a person or entity.

41. In *State of Orissa* v. *Binapani Dei* [*State of Orissa* v. *Binapani Dei*, AIR 1967 SC 1269] , a two-Judge Bench of this Court held that every authority which has the power to take punitive or damaging action has a duty to give a reasonable opportunity to be heard. This Court further held that an administrative action which involves civil consequences must be made consistent with the rules of natural justice : (AIR p. 1271, para 9)

> "*9*. … The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed : it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

42. In *Maneka Gandhi* v. *Union of India* [*Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248] , a seven-Judge Bench of this Court held that any person prejudicially affected by a decision of the authority

entailing civil consequences must be given an opportunity of being heard. This has been reiterated in a catena of decisions of this Court.

44. In *Mohinder Singh Gill* v. *Chief Election Commr.* [*Mohinder Singh Gill* v. *Chief Election Commr.*, (1978) 1 SCC 405] , a Constitution Bench of this Court held that "civil consequences" cover infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In that case, the Court held that denial of a democratic right to cast a vote inflicts civil consequences. In *D.K. Yadav* v. *J.M.A. Industries Ltd.* [*D.K. Yadav* v. *J.M.A. Industries Ltd.*, (1993) 3 SCC 259 : 1993 SCC (L&S) 723] , a three-Judge Bench of this Court observed that "everything that affects a citizen in his civil life inflicts a civil consequence".

45. In *Canara Bank* v. *V.K. Awasthy* [*Canara Bank* v. *V.K. Awasthy*, (2005) 6 SCC 321 : 2005 SCC (L&S) 833] , a two-Judge Bench of this Court succinctly summarised the history, scope, and application of the principles of natural justice to administrative actions involving civil consequences in the following terms : (SCC pp. 331-32, para 14)

> "*14*. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What

> particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. *Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life*."
>
> (emphasis supplied)
>
> **46.** There is a consistent pattern of judicial thought that civil consequences entail infractions not merely of property or personal rights, but also of civil liberties, material deprivations, and non-pecuniary damages. Every order or proceeding which involves civil consequences or adversely affects a citizen should be in accordance with the principles of natural justice."

12) On being queried, the Appellants have consented to take the process further by complying with due process of law and by strictly adhering to the principles of natural justice. Per *contra*, the learned Counsels for the Respondents have stated that the impugned proceedings i.e., decision of the authority to cancel the agreement be set-aside and the authority be

directed to start the process afresh in compliance with the mandate of principles of natural justice.

13) In that view of the matter, we are of the considered opinion that the Writ Appeals could be disposed of by placing the submissions of the learned Counsels on record.

14) Accordingly, the Writ Appeals are ***disposed of*** by quashing the impugned notice bearing Rc. No.47/2023/LANDS, dated 23.01.2024. The quashing of notice shall not be a prohibition for the authority to recommence the process. In the event the Authority desires to re-commence the process; it,

i). shall issue notices to all the individuals to show cause against the action proposed to be taken;

ii). the authority shall grant 15 days time to the individuals to submit their objections/statements;

iii). the authority shall thereafter fix a date of hearing, which shall be after the lapse of at-least three [03] weeks from the date of submission of objections/statements.

The same shall be communicated to the parties by way of written intimation;

iv). the authority shall thereafter hear the parties conclude the hearing by a speaking order; and

v). No order as to costs.

15) It is made clear that, it is open for the Petitioners to raise all legally permissible objections. It is further clarified that the above order shall not be construed as a pronouncement on the merits of the case or the grounds canvassed by the parties.

16) The time schedule would commence one week from the date of receipt of this Common Judgment.

17) In view of the above consensus in drawing this Judgment, the Writ Petitions also stands disposed of in the above terms.

18) As a sequel, miscellaneous petitions, if any, pending shall stand closed.

G.NARENDAR, J

NYAPATHY VIJAY, J

Date: 27.02.2024
Sm…

THE HON'BLE SRI JUSTICE G.NARENDAR

AND

THE HON'BLE SRI JUSTICE NYAPATHY VIJAY

W.A. No. 107 of 2024
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(Common Judgment of the Division Bench delivered by the Hon'ble Sri Justice G.Narendar)

Date: 27.02.2024

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